SPEECH

OF

HON. A. G. BROWN, OF MISSISSIPPI,

ON THE

BILL TO AUTHORIZE THE PEOPLE OF THE TERRITORY OF KANSAS

TO FORM A

CONSTITUTION AND STATE GOVERNMENT, PREPARATORY TO THEIR ADMISSION INTO THE UNION, WHEN THEY HAVE THE REQUISITE POPULATION.

DELIVERED IN THE SENATE OF THE UNITED STATES, APRIL, 28, 1856.

WASHINGTON:
PRINTED AT THE UNION OFFICE.
1856.

SPEECH.

Mr. President: With the indulgence of the Senate, I propose to submit a thought or two on some of the points involved in this debate.

I will not enter the list with those whose range is over the whole wide field which this Kansas question has opened up; but shall confine myself to a few points on which I think the controversy mainly rests:—points which I believe lie farther back than most of our speakers have yet gone. To whom does the proprietorship of the Territories belong? How far does the legislative authority of Congress extend over the Territories? What are the political rights of the inhabitants there, and in whom does the sovereignty reside? These are the points which I mean, not separately but collectively, to consider. It is time we had come to an understanding on these points. A failure to do so at the proper time has, I think, involved us in much of the embarrassment which we now suffer.

It will be seen at once that the line of argument which I have marked out for myself will lead me to consider, to some extent, the doctrine of "squatter sovereignty." This doctrine, however well designed by its authors, has, in my judgment, been the fruitful source of half our troubles. Before the people of the two sections of the Union having (as they supposed, though, I think, erroneously) hostile interests, and already inflamed by angry passions, were invited into the country, we, who gave them laws, should have defined, clearly and distinctly, what were to be their rights after they got there. Nothing should have been left to construction. I believed, when the Kansas bill was passed, that it conferred on the inhabitants of the Territories, during their territorial existence, no right to exclude or in any wise to interfere with slavery. I then thought, and still think, it the duty of the law-making power in a Territory to treat all property alike; to give the same protection to one species of property that it gives to another. But I knew at the time, and still know, that others were of a different opinion. Many whose opinions I am accustomed to respect believed that the law-makers could discriminate against slave property. It is time we had

settled this delicate and perplexing question. To me it is therefore a source of unfeigned satisfaction that the senator from Illinois (Mr. DOUGLAS) has brought forward this bill. I see in it the germs of a final and lasting settlement, on a firm and a solid basis. It carries out the original design of the Kansas-Nebraska act as I understood it. It fixes the period at which the inhabitants of a Territory may ask its admission into the Union as a State, and the report by which it is accompanied denies all sovereignty in the Territory during its territorial existence. If we pass it, it will be done, I hope, on the distinct understanding that, hereafter, a Territory can only ask admission into the Union as a State after it is ascertained by a census, lawfully taken, that it has the required federal population to entitle it to at least one representative in Congress; and upon the further understanding that the sovereignty is not in the Territory, but that it is in abeyance, held by the States or the United States in trust for the Territory until its admission as a State.

The advocates of States rights have always held that the Territories are the common property of the States; that one State has the same interest in them as another; and that a citizen of one State has the same rights to go to them as a citizen of any other State. The corollary therefore has been, that a citizen of any one State has the same right as a citizen of any other State to go into the Territories and take with him whatever is recognised as property in the State from which he goes. Thus: if a citizen of Massachusetts may go and take with him a bale of goods, a citizen of Tennessee may go and take a barrel of whiskey; and if a citizen of New York may go and take a horse, a citizen of Mississippi may go and take a slave. It must be so, or else the equality of the parties is destroyed. Tennessee becomes inferior to Massachusetts, and the rights of a Mississippian are inferior to those of a New Yorker.

This doctrine finds opposition in many quarters. It is opposed by freesoilers and by the advocates of that uncertain theory which some call territorial sovereignty; others, popular sovereignty; and others again, squatter sovereignty;—a theory which the author of this bill so well combats in the declaration that "the sovereignty of a Territory remains in abeyance, suspended in the United States in trust for the people until they shall be admitted into the Union as a State." To this declaration I give my assent. It would perhaps have been more exact to have said that the sovereignty is in the States. But if it is in the United States *as a trust*, it can never be used by the trustee for

his own purposes; and, therefore, while it may not be so sound in theory, it will be found quite as safe in practice, to admit that it is in the United States.

I have said that the States were equal and had equal rights in the Territories, and I have thereby admitted that Massachusetts is equal to Mississippi, and has all the rights in the Territories which I claim for Mississippi. If this equality does not exist, why does it not? Did it never exist, or has it been destroyed? That it did exist is manifest from the very nature and structure of the government under which we live. The States were equal before they adopted the constitution, and they entered the confederacy as equals. That the equality has not been destroyed is proven by the organization of this body, in which the smallest State has two votes and the largest has no more. The States were equals out of the Union, they must be equals in it.

The power which can destroy the equality of the States must be that supreme power which we call the sovereignty—the power in the State, which is superior to all other powers.

Where does this power reside? Is it in Congress? May Congress exercise the power of a sovereign in the Territories?

The doctrine of Congressional sovereignty I understand to be denied in the report which accompanies this bill. The eminent and distinguished author of this report (Mr. Douglas) reposes the sovereignty in the United States, in trust for the Territory until it becomes a State. I need hardly make an argument to show that a trustee cannot use a trust for his own purposes, nor for purposes not clearly embraced in the deed. A fund held in trust for an infant, to be delivered when he comes of age, must be held without waste, and delivered to him without deduction at the proper time. The same rule, I apprehend, will hold as between the United States and a Territory.

If Congress may at pleasure use a trust confided to the United States for the benefit of a Territory, so as to exclude slavery from that Territory, then there can be no reason why Congress may not, in the exercise of the same trust, exclude spirituous liquors, foreign and domestic goods, or any thing else that offends the prejudices or excites the passions of the trustee, or I should rather say the representative of the trustee, for Congress is but the representative of the United States.

I am not going to discuss the constitutional power of Congress to exclude slavery from the Territories. If the argument on that point has not already been exhausted, it has at least become threadbare. It

is asserted and maintained with great unanimity by all sound democrats, that Congress has no such power. If Congress has not the authority, who has? Where does it reside? Is it in the territorial legislature? What is a territorial legislature? It is the creature of Congress. Can Congress confer powers it does not itself posses? Can the creature derive powers which do not belong to the creator? Can the stream rise higher than its source? The manifest answer to all these questions must be no. Congress can confer on the Territories just such powers as itself possesses, and none other; and as Congress does not possess this power, it cannot confer it on the territorial legislature.

The excluding of slavery or any other property from the country, is a high act of sovereignty. If Congress, the representative of the party *holding the sovereignty in trust*, may exercise this power, then Congress ceases to be the mere agent of a trustee, and becomes the owner and paramount title holder. If the territorial legislature may exclude slavery, or otherwise exercise the rights of sovereignty in the Territory, it must do it by virtue of a special grant from the trustee. But if the United States invests the Territory with that sovereignty, or any part of it, which it holds in trust to be delivered up when the Territory becomes a State, it abuses its trust as much so as if a guardian holding property in trust for an infant ward to be delivered when the ward becomes of age, abuses his trust, if he deliver the property during the minority of the ward.

These reflections have been produced by no disposition to carp at or find fault with any one's doctrines or opinions, but from an earnest desire to reach wise and salutary conclusions as to what is the true theory on this troublesome point.

There seems to be a certain undefined idea in the minds of some men, that the sovereignty of a Territory is inherent in the people of a Territory; that it came to them from on high; a sort of political manna descended from Heaven on these children of the forest. This doctrine, I confess, is a little too ethereal for me. I don't comprehend it. But this I know, if the sovereignty is in the people of the Territory, whether they obtained it from God or men, the conduct of this government towards them is most extraordinary. It is nothing short of downright usurpation and despotism. We have now seven governors, appointed by the President by and with the advice and consent of the Senate, to govern the seven Territories of the United States. We have seven different sets of territorial judges, appointed in the same way, to expound

the laws for the seven Territories. We have marshals to arrest, and district attorneys to prosecute, the inhabitants of these *sovereignties* in their own country. We require the Territories to legislate in obedience to our acts, and, lest they may go astray, we sometimes oblige them to send up their laws for our approval. It has happened, time and time again, that their legislation has fallen under the disapprobation of Congress, and thereby became void. What a mockery to disclaim the sovereignty yourselves declare that is in the people of the Territory, and then send a governor to rule them; judges to expound their laws; marshals to arrest and district attorneys to prosecute them; and, finally, to require these sovereigns to send up their laws for your sanction, and then, by your disapproval, to render them null.

If the sovereignty is not in Congress, and not in the Territories, you ask me, where is it? The question has been answered by the senator from Illinois, in the very able report which accompanies this bill. He says, "it is in abeyance suspended in the United States in trust for the people of the Territories until they are admitted into the Union as a State." I have already indicated my entire willingness to adopt this answer, though I should have answered somewhat differently myself. I should have said, it is in the States, or, if you please, in the people of the States.

It may be well in this connexion to give my own views on this point. I hold that the rights of sovereignty over the Territories, never having been delegated to Congress, are, in the language of the constitution, reserved to the States, or to the people of the States.

When the constitution was framed there were no such people as the people of the Territories. The people spoken of in the constitution, must, therefore, have been the people of the States, for there was none other.

The sovereignty being in the States or in the people, Massachusetts must retain her part, New York hers, Tennessee hers, Mississippi hers, and all the other States their parts, respectively, to be held and exercised jointly, until the Territory, with the requisite population legally and constitutionally ascertained, and with a republican form of government, asks admission into the Union as a State. As she steps into the Union she becomes co-equal with the other States, and *es instanti*, the sovereignty passes from the States as they now exist into the new State.

It will be seen at once that I make a wide difference between *existing* and *incipient* States. On this point I believe the practice of the

government has been right. That practice has marked the difference in broad and legible characters between States and Territories. The existing States have always elected their own governors, appointed their own judges, and no man in his wildest fancies has ever dreamed of having a State send up her laws for the approval of Congress. The sovereignty of the States has been manifested in the full and unrestrained freedom with which they have acted on all these points. Exactly the contrary has been true in reference to incipient States or Territories. Whenever they have acted, it has been in subordination to the authority of Congress—a subordination which at once, in my judgment, destroys all idea of sovereignty.

The President's annual message to Congress, I am glad to say, is marked by a boldness and originality of thought, and a frankness of expression, that challenges and receives the tribute of my sincere admiration. In that paper he declares that "the country has been awakened to a perception of the constitutional principle of leaving the matter (slavery) to the discretion of the respective existing and incipient States." I have no criticism to make on this language; I quote it only to say, that if by an incipient State the President means a Territory with the requisite population to entitle it to one representative, lawfully ascertained, and in the act of forming a constitution, preparatory to admission into the Union as a State, then I agree with him fully, entirely, and cordially; such an incipient State has the right to settle the slavery question for herself. There can remain but one act necessary to the perfection of that right, and that is, her actual admission as a State. If Congress, however, should exclude her, her action in regard to slavery would fall with the rest of her constitution. She would in that case resume her position as a Territory. There can be no such thing as a State out of the Union.

I take this occasion to declare before this Senate, that a Territory asking admission into the Union as a State ought not to be excluded on the ground that her constitution admits or prohibits slavery. If in all other respects she is prepared for admission, it would be a monstrous outrage to exclude her on account of the *pro* or *anti-slavery* feature in her proposed constitution.

I have not denied, and do not mean to deny, the right of self-government in a Territory. We may differ as to what constitutes self-government; but I will go as far as any other man in maintaining the right. Do you ask me what, in my opinion, the people of a Territory have a right to do? I answer, unhesitatingly, they may do whatever is necessary to pro-

tect the public morals, or insure the public safety. Thus, the Territory may require spirituous liquors taken there from Ohio to be so kept and so used as that the public morals may not suffer thereby; and it may require a vicious animal taken from another State to be impounded, or so disposed of as that the public safety may not be endangered. And upon the same principle I admit it to be within the competency of the territorial legislature to regulate the use of slave property. To *regulate*, however, is one thing; to *destroy* without cause, and in simple obedience to public prejudice, is another and a very different thing.

It is competent for the sovereign to say what is and what is not property within his dominions. It will require the highest attributes of sovereignty, however, to determine so important a question as this. Attributes, in my judgment, far above those that belong to this Congress or to the Territories. Attributes which are inherent in the States, and, not having been delegated, are yet in the States, and no where else.

I have spoken of slaves simply as property, because it is in that relation that they will go to the Territory if they go there at all. Considered as persons only, there would perhaps be no effort made to exclude them. The relations between master and slave, parent and child, husband and wife, are all proper subjects of legislative regulation. But no one of them more than another is a proper subject for legislative distinction. It would be a monstrous exercise of power to dissolve all the matrimonial ties in a Territory, and absolve all the children from obedience to their parents, and yet it would require no greater power to do this than it would to break what is flippantly called the fetters that bind a slave to his master.

Am I asked if there is no power, no right anywhere, to abolish or prohibit slavery in the Territories. I answer, emphatically, that there is. It is in the States. A Territory is common ground. The States meet there as equals. No one has rights superior to another. So long as the equality can be maintained, and good faith preserved, no prohibitory or other act against slavery is necessary. If divisions spring up, and discord takes the place of harmony, then one of two things may be done. And either, in my judgment, will be consistent with the obligations, rights, and duties, of all the parties to the compact of our Union.

I have seen no necessity for the application of either of these remedies in our past history. I see none now. If the necessity shall ever arise, these remedies may be applied; their application, however, will be useless. The state of affairs that will make such remedies necessary,

will make the Union not worth preserving. I speak of them as remedies, but remedies never in my judgment to be applied.

If the States cannot occupy the territory jointly, the first and best remedy is to divide it. This may be done by a compact between the States. The compact, however, must be made by the States so acting in concert as to give the force and effect of a constitutional obligation to their expressed will. It cannot be done by Congress, nor by the State legislatures. Congress may propose, and the States speaking through their legislatures may ratify, an agreement, and thus give it the force and binding obligations of a compact. The States, acting through a convention of delegates so chosen as to represent the sovereignty, could make a compact. But as neither Congress nor the State legislatures represent the sovereignty, neither can make a compact that would be binding on the States.

The Missouri compromise, though passed by Congress and acquiesced in for a long time by the States, was never a compact, not having received at any time the sanction of the States with a view to make it so. I do not mean to say that compacts are provided for in the constitution. But I do mean to say, that, looking to the nature and structure of our government, it is my opinion that agreements may be entered into between the States that will be of higher authority than mere legislative enactments, and yet of lower dignity than a written constitution.

If a compact, such as I have mentioned, cannot be made, and discord continues to reign, the next and only remaining remedy is to prohibit or abolish slavery in the Territories, as you would do it in the States, by a change of the federal constitution. The mode is pointed out in the 5th article of the constitution in these words: "The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

If it shall be said that this is a plan of impracticable execution, I reply, "it is so denominated in the bond"—the bond of our Union—the bond of our safety. And though I would not demand of you the pound of flesh, I will yield nothing to your demands that is not denominated in the bond.

I utterly deny the power of Congress over slavery in the Territories. The majority report of the committee, in my judgment, takes the true ground, to wit: that Congress derives its power to make laws for the Territories from that clause in the constitution which gives it the right to admit new States. If Congress has the substantive power to admit a new State, it follows as a necessary incident that it has a right to prepare the State for admission. But in thus preparing a State it will be an assumption of power not warranted by the grant, to take advantage of her weak and dependent condition, and so to shape and mould her institutions as to force her, *nolens volens*, to take sides with one or the other of the parties to a sectional contest.

It was to avoid all suspicion of foul injustice like this to the Territory, as well as for the purpose of steering clear of an unhappy and unnatural sectional conflict, that the Kansas bill declared it to be "the true intent and meaning of this act not to legislate slavery into any State or Territory, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the constitution."

I concur fully with the able senator from Illinois, in saying that the inhabitants of Kansas, during their territorial existence, "are entitled to enjoy and exercise all the privileges and rights of self-government, in subordination to the constitution of the United States, and in obedience to their organic law passed by Congress in pursuance of that instrument." I would leave the people there perfectly free to regulate their domestic affairs in their own way, subject to the constitution and their organic law. But I can never admit that the power to regulate carries with it the right to destroy. Or that the people of a Territory, having the right to regulate an institution within their limits, have necessarily, or by any fair inference, the right to exclude that institution from the Territory. And in this view of the subject I am sustained, I think, by the luminous and powerful report of the senator [Mr. Douglas] who introduced this bill. The senator indicates in that report that Congress has no power to exclude from the Territories the domestic institutions of the States, and that the Territories, deriving their legislative powers solely from the constitution through the acts of Congress,

can, of course, do nothing which they are not empowered to do, either by the constitution or by Congress. But it is better, perhaps, to take the very words of the report. It says:

"The organic act of the Territory, deriving its validity from the power of Congress to admit new States, must contain no provision or restriction which would destroy or impair the equality of the proposed State with the original States, or impose any limitations upon its sovereignty which the constitution has not placed on all the States. So far as the organization of a Territory may be necessary and proper as a means of carrying into effect the provision of the constitution for the admission of new States, and when exercised with reference only to that end, the power of Congress is clear and explicit; *but beyond that point the authority cannot extend*, for the reason that all 'powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States repectively, or to the people.' In other words, the organic act of the Territory, conforming to the spirit of the grant from which it receives its validity, must leave the people entirely free to form and regulate their domestic institutions and internal concerns in their own way, subject only to the constitution of the United States, *to the end that when they attain the requisite population, and establish a State government in conformity to the federal constitution, they may be admitted into the Union on an equal footing with the original States in all respects whatsoever.*"

This explanation is apposite and conclusive. It denies to Congress the constitutional power to go further than to give an organic law to the Territory; and it places the denial on the impregnable basis of leaving the new State which is to grow out of the Territory "at perfect liberty to seek admission into the Union on an equal footing with the original States in all respects whatsoever." States have been admitted as non-slaveholding States, because they chose to exclude slavery; others have been admitted as slaveholding States, because they chose to hold slaves. Congress, in the days of their incipiency, did not undertake to mould and fashion their institutions. If other States are to be admitted on "an equal footing in all respects whatsoever," Congress must preserve a like course of non-intervention in their domestic affairs in the days of their incipiency. If Congress has no other power than to give an organic law to the Territory,—if, in the language of the report, "the authority cannot extend beyond that point,"—then it is clear Congress has not, because it could not, confer upon the Territory he right to exclude slavery. And if, as is pertinently said in another

part of the same report, "the rights and privileges" of the people o the Territory "are all derived from the constitution *through the acts of Congress*," and "they have no inherent sovereign right to annul the laws" which Congress has given them, it becomes equally clear that they have no authority derived from any quarter, either the constitution, the acts of Congress, or the God of nature, during their period of territorial existence, to exclude slavery. Such is my understanding of the report; such I believe to be the true intent and meaning of its author; and, so understanding and so believing, I give to the report my cordial and unqualified endorsement and approval.

If, contrary to the opinions I have expressed, and contrary to the opinions so clearly indicated in the report of the committee, the people of a Territory have the right to exclude slavery or other State institutions or property, it follows, as a matter of course, that a Territory is as much a sovereignty as a State. Nebraska is equal in dignity to Virginia, and Kansas may do within her limits whatever South Carolina may do within hers. A Territory may, and of right ought to, elect its own governor, appoint its own judges, make and expound its own laws; and, in short, do whatever a free and independent State may of right do. Kansas would in fact be superior, in many respects, to South Carolina. That venerable and patriotic State, having joined the confederacy, has parted with her right to make treaties and form alliances. But Kansas, being a sovereignty out of the Union, I can conceive of nothing that is to prevent her from making treaties, contracting alliances, or doing anything else which a sovereignty may do, even to the extent of uniting her destiny with that of England or France. If an incipient State is equal to an existing State on the subject of slavery, I cannot, for the life of me, see why the equality does not extend to everything else. But I can and do see that a State in the Union has parted with many of her political rights, whereas a State out of the Union has parted with none of hers; and, therefore, that it is better to be a State out of the Union than a State in it.

I cannot close my remarks on this branch of the subject without thanking the honorable Senator from Illinois [Mr. DOUGLAS] for his powerful vindication of the constitutional rights of all sections of the country. While he deals justice to the South with a liberal hand, he deducts not one jot nor tittle from the equal rights of the North. He holds the scales of justice in equal balance between the two sections. This all fair-minded men must applaud. For myself, I ask nothing more, and will accept nothing less.

A word more, Mr. President, and I am done. In passing the Kansas bill, Congress, in my opinion, committed one error, and out of that error has grown much of the confusion and discord which have ever since distracted the inhabitants of the Territory. It was just to repeal the Missouri restriction. But it was unwise to leave the inhabitants of the Territory in doubt as to the extent of their real powers. It was a grievous error not to have defined precisely what we meant "by leaving the people of the Territory perfectly free to form and regulate their domestic institutions in their own way."

The report of the committee and the bill under consideration propose to correct that error. The report defines with accuracy and precision what are the rights of the Territory during its territorial existence; and the bill proposes to authorize "the legislature of the Territory to provide, by law, for the election of delegates by the people, and the assembling of a convention to form a constitution and State government, preparatory to the admission into the Union on an equal footing with the original States, so soon as it shall appear, by a census to be taken under the direction of the governor, by the authority of the legislature, that the Territory contains ninety-three thousand four hundred and twenty inhabitants—that being the number required by the present ratio of representation for a member of Congress."

This is as it should be. It points to the time and circumstances under which KANSAS may seek and receive admission into the Union as a State. When she seeks admission according to the terms prescribed in this bill, she shall receive it if my vote will give it to her, and I will not inquire whether her constitution sanction or exclude slavery.

I have always believed, and now declare, that wherever a census has been fairly taken, and the result has shown that a Territory has the federal population to entitle it to one representative in Congress, it has the right to form a republican constitution and ask admission into the Union as a State. And I now give notice to all whom it may concern, that I will vote in all cases for the admission of States thus applying, without a why or a wherefore, and without stopping to inquire whether their proposed constitution recognise or prohibit slavery.

If this bill passes, as I sincerely trust it may, we shall have established a precedent that will stand, I hope, as a landmark and a guide in all time to come. It will fix a period at which the people of a Territory, acting within the purview of the constitution, in obedience to the authority of Congress rightfully exercised, and with the entire consent of all the people, may peaceably assemble and decide the slavery

question for themselves. When they have thus decided, there will doubtless be a universal acquiescence. Passion will subside; reason will resume her dominion; there will be no further cause of bickering; and we shall say with one voice to all the Territories, "Go thou and do likewise."